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VIA ECFS

October 28, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

**Re: North Dakota Telephone Company and Midstate Communications, Inc.
Joint Petition for Study Area Waiver
CC Docket No. 96-45**

Dear Ms. Dortch:

On behalf of North Dakota Telephone Company and Midstate Communications, Inc. ("Joint Petitioners"), please find enclosed the Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules and Waiver of Section 69.3(e)(11) of the Commission's Rules.

Inquiries may be directed to the undersigned consultant for the Joint Petitioners.

Sincerely,

John Kuykendall
Vice President
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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
North Dakota Telephone Company)	
)	
and)	
)	CC Docket No. 96-45
Midstate Communications, Inc.)	
)	
Joint Petition for Waiver of the Definition of)	
“Study Area” of the Appendix-Glossary of)	
Part 36 of the Commission’s Rules;)	
Petition for Waiver of Section 69.3(e)(11))	
of the Commission’s Rules)	

JOINT PETITION FOR WAIVER

Pursuant to Section 1.3 of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ North Dakota Telephone Company (“NDTC”) and Midstate Communications, Inc. (“Midstate”) (collectively, “Petitioners”) hereby request a waiver of the Commission’s study area boundary freeze codified in the Appendix-Glossary of Part 36 of FCC rules.² Petitioners seek waiver to reconfigure their respective study areas—Midstate to eliminate the York exchange and associated customer base from its study area, and NDTC to expand its study area to include those York exchange customers by incorporating them into its existing Leeds exchange. The transaction is a relinquishment of the York exchange customer base for no cost and does not involve purchase or acquisition of assets as NDTC will overbuild facilities. Petitioners also

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. Part 36 Appendix (“Study Area. Study area boundaries shall be frozen as they are on November 15, 1984.”)

request waiver of Section 69.3(e)(11) of the Commission's rules and, to the extent the Commission concludes it is applicable, waiver of Section 69.605(c) and (d).

I. INTRODUCTION AND SUMMARY

NDTC is a rate-of-return cost incumbent local exchange carrier ("ILEC") that owns and operates approximately 11,778 access lines in 25 North Dakota exchanges, Study Area Code 381447. Midstate is a rate-of-return average schedule ILEC that owns and operates approximately 1,008 access lines in two North Dakota exchanges, Study Area Code 381638.

Midstate will relinquish to NDTC at no cost twelve (12) customers served over twenty (20) access lines in the York exchange, an area entirely surrounded by NDTC serving territory (see Exhibit A, Attachment 7). NDTC will assume the York exchange customer base and service territory as part of its Leeds exchange, and will overbuild facilities to serve those 12 customers. Midstate's York exchange is comprised of 6.5 square miles located in the northwestern portion of NDTC's study area.

Petitioners are separately filing a Joint Domestic Section 214 Application for Transfer of Control of Lines with the Wireline Competition Bureau.

II. WAIVER STANDARD

In general, the FCC's rules may be waived for good cause shown.³ Waiver is appropriate where the "particular facts would make strict compliance inconsistent with

³ 47 C.F.R. § 1.3.

the public interest.”⁴ The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁵

Part 36 of the Commission’s rules which freezes study area boundaries effective November 15, 1984 is intended to prevent ILECs from establishing separate study areas made up only of high-cost exchanges to maximize their receipt of high-cost universal service support. The Commission adopted a two-prong standard for evaluating petitions for study area waiver: (1) the state commission having regulatory authority over the transferred exchanges does not object to the transfer and (2) the transfer must be in the public interest.⁶

III. WAIVER IS JUSTIFIED

A. State Commission Does Not Object to Transfer of Exchange

On September 28, 2015, the North Dakota Public Service Commission (“ND PSC”) approved Petitioners’ joint applications to modify serving territories and Eligible Telecommunications Carrier (“ETC”) designated territory whereby Midstate’s York exchange was relinquished, assigned to NDTC, and incorporated into the existing NDTC Leeds exchange (see Exhibit B, ND PSC Order). The ND PSC cancelled Midstate’s

⁴ See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

⁵ See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

⁶ See *Connect America Fund et al.*; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) at 265.

designation as an ETC in the York exchange and designated NDTC as the ETC for that area.

B. Transfer of the York Exchange from Midstate to NDTC is in the Public Interest

1. Number of Lines at Issue

The access lines at issue in this waiver request total only 20. Customers have been stranded to the extent that their geographic location limits the network investment Midstate can reasonably undertake for so few lines. NDTC can efficiently and effectively provide advanced telecommunications voice and robust broadband services, can offer York exchange customers the Extended Area Service calling offered throughout its study area, is strategically located to overbuild facilities to existing York exchange customers, and is committed to provide services to any customer in the expanded study area upon reasonable request.

Midstate has surveyed its York customers and confirmed that virtually all those customers would like to connect to NDTC in order to have access to a larger calling area, higher speed broadband, and access to other NDTC services (see Exhibit A, Attachment 4).

2. Projected Universal Service Fund Cost Per Line

NDTC assumption of the York exchange lines would represent for NDTC an insignificant gain in estimated Interstate Common Line Support (“ICLS”) and no gain at all in estimated High Cost Loop Support (“HCLS”).⁷ The greater impact is represented

⁷ With the York exchange lines, NDTC ICLS would result in an annual increase of \$98. As a result of the Parent Trap rule, there would be zero HCLS to NDTC for the York exchange lines.

in Midstate's loss in 2016 estimated support of \$37,051 in ICLS and \$40,605 in HCLS, resulting in an overall positive impact on the Universal Service Fund.

Midstate's willingness to forgo USF for the relinquished York exchange is evidence of the increasing burden it has faced to maintain its network facilities for 20 access lines in an area that is geographically isolated from the Company's other North Dakota operations.

C. Waiver of Section 69.3(e)(11) of the Commission's Rules is Warranted

NDTC also requests waiver of Section 69.3(e)(11) in order to allow it to include the York access lines, revenues and investment in the National Exchange Carrier Association ("NECA") tariff process. The inclusion of the small number of additional access lines in the NECA carrier common line tariff would represent a minimal increase in NECA common line pool participation and would remove a significant burden in administrative costs to separately file an interstate ILEC tariff until the next annual access tariff filing effective following grant of the Petition.

D. Waiver of Section 69.605(c) and (d)

Midstate is an average schedule company under Section 69.605(c) of the Commission rules. NDTC is a cost company under Section 69.605(d). NDTC seeks waiver of Section 69.605(c) and (d) to the extent the Commission deems necessary in order to operate the former average schedule York exchange access lines under a cost regime in the expanded NDTC Leeds exchange.

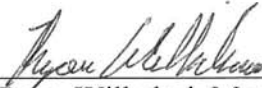
IV. Conclusion

As demonstrated herein, "good cause" exists for grant of this waiver. Expansion of the NDTC study area to include the relinquished York exchange would serve the public interest through the improved services received by the mere handful of customers who otherwise will not have access to advanced services. Midstate's willingness to relinquish the York exchange and assign to NDTC is motivated by the geographic isolation of 12 customers in the midst of NDTC serving territory. The Petitioners' requested modification of study area boundaries will not in any way burden the universal service fund. It will, however, improve the telecommunications services available to these 12 customers as a result of their proximity to NDTC's network.

Respectfully Submitted,



By: Dave Dircks, CEO/General Manager
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By: Ryan Wilhelmi, Manager
MIDSTATE COMMUNICATIONS, INC.
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10/27, 2015

DECLARATION OF DAVE DIRCKS
NORTH DAKOTA TELEPHONE COMPANY

I, Dave Dircks, CEO/General Manager of North Dakota Telephone Company ("NDTC"), do hereby declare under penalty of perjury that the statements made in this Joint Petition for Waiver are true and accurate to the best of my knowledge, information and belief.

Dated this 27 day of October, 2015.

North Dakota Telephone Company

A handwritten signature in blue ink, appearing to read 'D. Dircks', is written over a horizontal line.

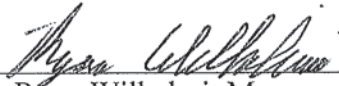
By: Dave Dircks, CEO/General Manager

DECLARATION OF OF RYAN WILHELMI
MIDSTATE COMMUNICATIONS, INC.

I, Ryan Wilhelmi, Manager of Midstate Communications, Inc., do hereby declare under penalty of perjury that the statements made in this Joint Petition for Waiver are true and accurate to the best of my knowledge, information and belief.

Dated this 27 day of Oct, 2015.

Midstate Communications, Inc.


By: Ryan Wilhelmi, Manager